

PUBLIC HEARING
COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:36 a.m.
DATE: Tuesday, July 30, 2002
PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

WALTER BARNES
Representative for KATHLEEN CONNELL
State Controller

JOHN S. LAZAR
Turlock City Council
Public Member

SHERRY WILLIAMS
Representative TAL FINNEY, Interim Director
State Office of Planning and Research

BRUCE VAN HOUTEN
Representative for PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

--o0o--

COMMISSION STAFF

PAULA HIGASHI, Executive Director

CATHERINE M. CRUZ, Program Analyst

SHIRLEY OPIE, Assistant Executive Director

NANCY PATTON, Staff Services Manager

CAMILLE SHELTON, Staff Counsel

PAUL M. STARKEY, Chief Legal Counsel

KATHERINE TOKARSKI, Staff Counsel

--o0o--

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 2 (Administrative License Suspension -
Per Se/98-TC-16):**

For City of Newport Beach (Claimant):

PAMELA STONE
Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

HOWARD EISENBERG
Traffic Investigator
City of Newport Beach Police Department
870 Santa Barbara Drive
Newport Beach, CA 92660

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

For Department of Finance:

ELLIOTT MANDELL
Principal Program Budget Analyst
State of California
Department of Finance
915 L Street
Sacramento, CA 95814

**Appearing Re Item 3 (Standards-Based Accountability/
98-TC-10):**

For San Diego Unified School District:

ARTHUR M. PALKOWITZ
Legislative Mandate Specialist
San Diego City Schools
4100 Normal Street, Room 3159
San Diego, CA 92103

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3 (Standards-Based Accountability/ 98-TC-10):

For Education Mandated Cost Network:

CAROL A. BERG, Ph.D.
Executive Vice-President
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

For Department of Finance:

MOHAMMED WARDAK
State of California
Department of Finance

MIKE WILKENING
State of California
Department of Finance

For California Department of Education:

JUAN SANCHEZ
Fiscal Services
California Department of Education

Appearing Re Graduation Requirements

Item 4: CSM 4435-I-02, 16, 17 & 19;

Item 5: CSM 4435-I-14, 15, 18, 22, 24, 25 & 34;

Item 6: CSM 4435-I-21 & 31;

Item 7: CSM 4435-I-23, 26, & 28:

For All Claimants of Items 4, 5, 6 and 7:

DAVID E. SCRIBNER
Spector, Middleton, Young & Minney
7 Park Center Drive
Sacramento, CA 95825

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Graduation Requirements

Item 4: CSM 4435-I-02, 16, 17 & 19;

Item 5: CSM 4435-I-14, 15, 18, 22, 24, 25 & 34;

Item 6: CSM 4435-I-21 & 31;

Item 7: CSM 4435-I-23, 26, & 28: *continued*

For the State Controller:

GINNY BRUMMELS
State Controller's Office

SHAWN D. SILVA
State Controller's Office

For Department of Finance:

MOHAMMED WARDAK
State of California
Department of Finance

MIKE WILKENING
State of California
Department of Finance

Appearing Re Item 8 (Comprehensive School Safety Plans/ 98-TC-01 & 99-TC-10):

For Long Beach Unified School District:

DAVID E. SCRIBNER
Spector, Middleton, Young & Minney

For Education Mandated Cost Network:

CAROL A. BERG, Ph.D.
Executive Vice-President
School Services of California, Inc.

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 8 (Comprehensive School Safety Plans/
98-TC-01 & 99-TC-10):** *continued*

For Department of Finance:

CHERYL BLACK
Department of Finance

For State Controller's Office:

SHAWN D. SILVA
State Controller's Office

**Appearing Re Item 9 (Emergency Procedures, Earthquake and
Disasters/01-PGA-01):**

For Mandated Cost System:

DAVID E. SCRIBNER
Spector, Middleton, Young & Minney

For Education Mandated Cost Network:

CAROL A. BERG, Ph.D.
Executive Vice-President
School Services of California, Inc.

For Department of Finance:

CHERYL BLACK
Department of Finance

For State Controller's Office:

SHAWN D. SILVA
State Controller's Office

--o0o--

ERRATA SHEET

Page	Line	Correction
32	17	Change "Claims" to "Claimants"
33	8	Change "Statements" to "Savings"
44	12	Change "2241" to "4241"
49	22	Change "Questions" to "Corrections"
81	23	Change "POBR" to "POBAR"
66	19	Strike "in common law"

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call	12
II. Approval of Minutes	
Item 1 June 27, 2002	12
III. Proposed Consent Calendar	NA
None	
IV. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims:	
Item 2 Administrative License Suspension - Per Se, 98-TC-16 City of Newport Beach, Claimant Presented by Camille Shelton.....	14
Item 3 Standards-Based Accountability 98-TC-10 San Diego Unified School District, Claimant Presented by Katherine Tokarski...	25
B. Incorrect Reduction Claims	
Item 4 Graduation Requirements CSM 4435-I-02, 16, 17, & 19 Yuba City Unified School District, John Swett Unified School District, Stockton Unified School District & Center Unified School District Claimants	31

I N D E X

Proceedings

Page

IV. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

B. Incorrect Reduction Claims *continued*

Item 5	Graduation Requirements CSM 4435-I-14, 15, 18, 22, 24, 25 & 34 Vallejo City Unified School District, West Contra Costa Unified School District, Novato Unified School District, San Francisco Unified School District, Dixon Unified School District, Eastside Union High School District, Linden Unified School District, Claimants	31
Item 6	Graduation Requirements CSM 4435-I-21 & 31 Lake Tahoe Unified School District, & Simi Valley Unified School District, Claimants	31
Item 7	Graduation Requirements CSM 4435-I-23, 26 & 28 El Dorado Union High School District, Galt Joint Union High School District, Lincoln Unified School District, Claimants	31
Items 4, 5, 6 and 7 were presented by Catherine Cruz		32

C. Reconsideration

Item 8	Comprehensive School Safety Plans 98-TC-01 & 99-TC-10 Kern High School District, Claimant Office of the State Controller & Long Beach Unified School District, Requesters Presented by Paul Starkey.....	43
--------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

I N D E X

Proceedings

Page

V. Informational Hearing Pursuant to California Code
of Regulations, Title 2, Chapter 2.5, Article 8

A. Adoption of Proposed Amendment to Parameters
and Guidelines

Item 9 Emergency Procedures, Earthquake
and Disasters
01-PGA-01
Office of the State Controller,
Requester
Presented by Nancy Patton..... 48

B. Adoption of Commission Order to Initiate
Rulemaking

Item 10 Proposed Amendments to California
Code of Regulations, Title 2,
Division 2, Chapter 2.5, Article 1.
General, Article 3. Test Claims,
Article 5. Other Claims, and
Article 6. Cost Savings Claims.
Presented by Shirley Opie..... 61

VI. Executive Director's Report

Item 11 Workload, Legislation,
Next Agenda
Presented by Paula Higashi 79

VII. Public Comment 80

VIII. Closed Executive Session Pursuant to
Government Code .11126 and .17526 82

A. Pending Legislation

B. Personnel

I N D E X

<u>Proceedings</u>	<u>Page</u>
IX. Report from Closed Executive Session	84
Adjournment	84
Reporter's Certificate	85

--o0o--

1 BE IT REMEMBERED that on Tuesday, July 30, 2002,
2 commencing at the hour of 9:36 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 CHAIR PORINI: We'll go ahead and call to order
8 today's meeting of the Commission on State Mandates.

9 May I have roll call?

10 MS. HIGASHI: Mr. Barnes?

11 MEMBER BARNES: Here.

12 MS. HIGASHI: Mr. Lazar?

13 MEMBER LAZAR: Here.

14 MS. HIGASHI: Ms. Steinmeier?

15 MEMBER STEINMEIER: Here.

16 MS. HIGASHI: Mr. Van Houten?

17 MEMBER VAN HOUTEN: Here.

18 MS. HIGASHI: Ms. Williams?

19 MEMBER WILLIAMS: Here.

20 MS. HIGASHI: Ms. Porini?

21 CHAIR PORINI: Here.

22 Okay, we have a quorum.

23 Our first item of business, since there's no
24 consent calendar today, would be our minutes.

25 Corrections, changes, motion?

1 MEMBER STEINMEIER: Move approval.

2 MEMBER LAZAR: Second.

3 CHAIR PORINI: We have a motion by

4 Ms. Steinmeier, a second by Mr. Lazar.

5 All those in favor indicate by saying "aye."

6 (A chorus of "ayes" was heard.)

7 CHAIR PORINI: Opposed?

8 MEMBER VAN HOUTEN: Can I say "abstain"?

9 CHAIR PORINI: One abstention from the

10 Treasurer's Office.

11 All right, that takes us to our first test

12 claim, Item Number 2.

13 MS. HIGASHI: This brings us to the hearing

14 portion of our meeting. We have Items 2 through 8,

15 actually, that are having hearings under Article 7.

16 As is customary, what I'd like to do is ask all

17 of the parties, representatives and witnesses who are in

18 the audience area, to please stand, if they intend to

19 testify on any of the items under Article 7 hearings.

20 Would you all please raise your right hands?

21 Do you solemnly swear or affirm that the

22 testimony which you are about to give is true and

23 correct, based upon your personal knowledge, information,

24 or belief?

25 (Chorus of "I do's" was heard.)

1 MS. HIGASHI: Thank you.

2 Item 2, our first test claim, is on the
3 Administrative License Suspension, Per Se. This item
4 will be presented by Camille Shelton.

5 MS. SHELTON: Good morning. This test claim
6 addresses the Administrative License Suspension
7 legislation, which became effective on July 1st, 1990.
8 Generally, the test claim legislation requires a peace
9 officer, on behalf of the Department of Motor Vehicles,
10 to immediately seize a valid California driver's license
11 in the possession of a person who arrested or detained
12 for driving under the influence of alcohol, immediately
13 serve an order of suspension or revocation and issue a
14 temporary driver's license to the driver.

15 The claimant has also included two 1997 statutes
16 in this test claim that addresses suspension or delay of
17 the issuance of a driver's license ordered by the court
18 following a conviction of a specified controlled
19 substance offense.

20 As amended, Vehicle Code Section 13202.2
21 requires the peace officer that arrests a person for
22 violation of a controlled substance offense to inform the
23 person of the driver's license sanctions of suspension or
24 delay, either orally or in writing.

25 For the reasons provided in the staff analysis,

1 staff recommends that the test claim legislation
2 constitutes a reimbursable state-mandated program for
3 those activities listed on page three of the Executive
4 Summary.

5 Will the parties, witnesses and representatives
6 please state your names for the record?

7 MS. STONE: Good morning. Pamela Stone on
8 behalf of the City of Newport Beach.

9 MR. EISENBERG: Howard Eisenberg, the City of
10 Newport Beach

11 MR. EVERROAD: Good morning. Glen Everroad,
12 City of Newport Beach.

13 MR. MANDELL: Elliott Mandell for the Department
14 of Finance.

15 CHAIR PORINI: Ms. Stone, would you like to
16 begin?

17 MS. STONE: Yes. Good morning, Madam Chair,
18 Members of the Commission.

19 We would like to, first of all, thank the
20 Commission staff for their diligent work on this matter.

21 The record was extensive and required a substantial
22 amount of analysis, because what we are looking at here
23 is a very small component of driving under the influence,
24 DUI, arrests.

25 We're only looking for that portion wherein the

1 officer acts on behalf of the Department of Motor
2 Vehicles with regard to the actual suspension of the
3 license, because prior to the initiation of this
4 particular mandate, it would be the court's adjudication
5 that would refer a court order, saying that the license
6 was to be suspended; or, in the alternative, that the
7 individual was being convicted of a DUI, to the
8 Department of Motor Vehicles. However, because
9 oftentimes we know how attorneys are, it would take years
10 for these particular cases to wander through the system,
11 and you would have someone with an alcohol problem out on
12 the roads. And for that purpose, this particular mandate
13 was imposed so that the license would be suspended
14 immediately upon the arrest.

15 And with that, I'll turn it over to
16 Mr. Eisenberg, who has been with the Newport Beach Police
17 Department for about 24 years.

18 MR. EISENBERG: Good morning.

19 As indicated, my name is Howard Eisenberg; and
20 I have been a police officer with the City of Newport
21 Beach for the past 24 years, the past 14 of which I've
22 been working specifically in the traffic division. And
23 currently, I'm a traffic investigator, an accident
24 reconstructionist for the city.

25 In that capacity, I've arrested a number of DUI

1 drivers; and I've testified at DMV hearings and at DUI
2 criminal proceedings.

3 I was asked to provide some personal experiences
4 and insights on this matter, and have done so in the
5 depositions that I'm sure you have before you.

6 After reviewing the test claim analysis that
7 staff put together -- which, again, was quite extensive
8 and involved a heck of a lot of work on their part,
9 several questions still remain for me for the
10 street-level police officer.

11 One is, under the admin per se laws, the police
12 officer who is basically charged with investigating
13 criminal matters, has been asked -- or tasked with
14 enforcing civil aspects of the California Vehicle Code,
15 in essence, has become the civil process server for the
16 DMV.

17 Another issue that was rather surprising to me,
18 is that written into the California Vehicle Code, there
19 is a 100-dollar fee that is collected by the DMV in these
20 administrative per se processes before a license can be
21 reinstated; and that 100-dollar fee, partially, is
22 earmarked to compensate the Highway Patrol for appearing
23 at these administrative hearings.

24 There is no such provision for local law
25 enforcement agencies, who basically provide the same

1 function.

2 Another issue that came up, that I'm sure will
3 be addressed in detail later, had to do with how much
4 time the officer actually spends performing the admin per
5 se duties. The California Highway Patrol did a survey,
6 indicating that the average time was approximately
7 14 minutes. My personal experience is anywhere from
8 15 to 30 minutes. However, I'm not sure that the survey
9 also included such time as processing the paperwork,
10 getting it to the DMV; and probably just included the
11 officer's time spent filling out the paperwork.

12 That leads into a training issue. There is a
13 tremendous amount of time spent in preparing and training
14 the officers on how to carry out the civil process. And
15 probably most critically out of that is that the civil
16 process, the admin per se hearings, which oftentimes, and
17 most often occur before the criminal process, place the
18 police officer in the position of prosecuting attorney,
19 if you will, in opposed to the defense attorney at the
20 admin per se process, and the administrative hearings at
21 the DMV oftentimes conserve to compromise --
22 inadvertently so -- but compromise the criminal
23 proceedings, which may occur several months later.

24 And with that, I will turn it over to
25 Mr. Everroad.

1 MR. EVERROAD: Good morning. I'd like to
2 echo --

3 CHAIR PORINI: Would you state your name for the
4 record?

5 MR. EVERROAD: I beg your pardon, Glen Everroad,
6 City of Newport Beach. And I would like to echo our
7 appreciation for staff's thorough analysis on this
8 particular test claim.

9 Navigating through the civil versus criminal
10 elements of these statutes is no easy task. And I think
11 they did a fine job in that effort.

12 I would like to echo Mr. Eisenberg's concern
13 relative to the 100-dollar fee that the Legislature
14 anticipated would be collected from the defendants in
15 these proceedings to offset the mandated costs that the
16 legislation imposed, and go on record as indicating that
17 none of that fee comes back to cities through the
18 Department of Motor Vehicles or through any other state
19 or federal subvention.

20 And with that, I think --

21 MS. STONE: The grants. We don't get the
22 grants, either.

23 MR. EVERROAD: Yes, counsel is reminding me that
24 I need to clarify for the record that through no traffic
25 safety grants, federal or state, does the city receive

1 any compensation for its costs in satisfying the
2 administrative per se proceedings that have been mandated
3 by the California Vehicle Code.

4 With that, if you have any questions you might
5 have, I'd be happy to answer.

6 MS. STONE: And, Madam Chair, this is with
7 regard to the statements by staff on pages 22 and 23,
8 indicating that, theoretically, some of that
9 hundred-dollar fee should trickle back down to the
10 people who actually do the administrative license
11 suspension per se; and also the trickle-down
12 theoretically of any federal grants from the federal
13 Highway Patrol trust fund that are given to states who
14 implement the lower blood alcohol level for individuals
15 under the age of 21 years, which obviously has happened
16 in the State of California.

17 Unfortunately, I can't speak to anybody else,
18 but I know it has not trickled down to the City of
19 Newport Beach.

20 Thank you very much.

21 CHAIR PORINI: All right, Camille, did you want
22 to make a comment on that?

23 MS. SHELTON: I can answer any questions for
24 clarification. It is described on page 23. And the
25 100-dollar fee is prescribed by Vehicle Code Section

1 14905, and it does, based on the plain language of
2 subdivision (a), say that the hundred dollars has to be
3 applied towards any reimbursement cost mandated by the
4 state for subdivisions (f) and (g) of 23157, which is the
5 requirement for the peace officer to take possession of
6 the license and forward the license to the DMV, with a
7 completed notice of suspension/revocation form. So those
8 are the activities that the staff has found to constitute
9 costs mandated by the state and reimbursable under
10 Article XIII B.

11 CHAIR PORINI: Okay, questions?

12 MEMBER STEINMEIER: Camille, if things were to
13 change and some of that money then was routed to the
14 local cities, then that would become either an offset or
15 maybe totally covered, if that happened; correct?

16 MS. SHELTON: Right. We recommended that that
17 just be identified in the Parameters and Guidelines as an
18 offset, if the Commission agrees with the staff analysis.

19 MEMBER STEINMEIER: Yes.

20 MS. SHELTON: And that would change after the
21 fact, if that code section were to be repealed or amended
22 in some way, then I would recommend the P's and G's
23 amendment at that point.

24 MEMBER STEINMEIER: Okay. So it would take care
25 of it in the offset portion.

1 What about training? Officer Eisenberg
2 mentioned training, and I don't see any training
3 components here.

4 MS. SHELTON: Well, there's no requirement by
5 statute that the officer be trained. But as we've done
6 in the past, we've decided to leave that for the
7 Parameters and Guidelines. I will say that you've all
8 received a videotape that was published or issued by the
9 Highway Patrol --

10 MS. STONE: The Highway Patrol, correct.

11 MS. SHELTON: -- which is a training video.
12 So certainly those issues can be discussed at the P's and
13 G's phase.

14 CHAIR PORINI: I just want to chime in on the
15 training issue. We've been very inconsistent in our
16 application of training. And I stated at our last
17 hearing where we had a training issue, that I'm not
18 supportive of including things in, after the fact, when
19 they haven't been part of the initial test claim. So
20 just for the record.

21 Are there other questions of the claimants?

22 Then we'll move on to Department of Finance.

23 MR. MANDELL: Madam Chair, Elliott Mandell,
24 Department of Finance.

25 In our June 25th letter to the Commission, we've

1 stated that the actions taken pursuant to the
2 administrative per se laws are triggered by the general
3 enforcement of crimes, and are clearly imposed in the
4 interest of public safety. Therefore, we consider our
5 interpretation of the crimes and infractions disclaimer
6 to be appropriately applied in this case.

7 CHAIR PORINI: Questions from Members?

8 All right, any other general questions or
9 comments?

10 Mr. Barnes?

11 MEMBER BARNES: Yes, just one question about the
12 hundred-dollar fee. Where is that, anyway? What is it
13 being used for?

14 MR. MANDELL: It's the -- oh, I'm sorry.

15 CHAIR PORINI: Were you asking Camille or
16 Elliott?

17 MEMBER BARNES: Either one, whoever knows.

18 CHAIR PORINI: Go ahead.

19 MR. MANDELL: It's deposited in the Motor
20 Vehicle account. It's used for the various and sundry
21 costs for which the Motor Vehicle account is appropriated
22 by the Legislature, the cost of the Department of Motor
23 Vehicles and the CHP, primarily.

24 It is not provided to locals, because at this
25 point it is a disclaimed mandate. There is not a need to

1 provide any reimbursement at this point to locals.

2 MEMBER BARNES: Okay. Thank you.

3 CHAIR PORINI: Other questions or comments?

4 All right, do I have a motion on this item?

5 MEMBER LAZAR: I'd like to move the staff

6 recommendation.

7 MEMBER STEINMEIER: Second.

8 CHAIR PORINI: All right, we have a motion by

9 Mr. Lazar, a second by Ms. Steinmeier.

10 Any further discussion?

11 May I have roll call?

12 MS. HIGASHI: Mr. Barnes?

13 MEMBER BARNES: Yes.

14 MS. HIGASHI: Mr. Lazar?

15 MEMBER LAZAR: Yes.

16 MS. HIGASHI: Ms. Steinmeier?

17 MEMBER STEINMEIER: Aye.

18 MS. HIGASHI: Mr. Van Houten?

19 MEMBER VAN HOUTEN: Yes.

20 MS. HIGASHI: Ms. Williams?

21 MEMBER WILLIAMS: No.

22 MS. HIGASHI: Ms. Porini?

23 CHAIR PORINI: No.

24 MS. STONE: Thank you very much.

25 MR. EVERROAD: Thank you.

1 CHAIR PORINI: Thank you.

2 MS. HIGASHI: Our next item is Item 3, the test
3 claim on Standards-Based Accountability. And this item
4 will be presented by Katherine Tokarski.

5 CHAIR PORINI: All right, let's wait a minute
6 for people to leave the room.

7 All right, Kathy?

8 MS. TOKARSKI: Good morning.

9 Claimant San Diego School District submitted
10 a test claim alleging a reimbursable state mandate for
11 test claim legislation and executive orders requiring
12 school districts to develop the instruments and processes
13 that are required to assess whether students meet or
14 exceed grade-level standards. Claimant further alleges
15 that school districts have reimbursable costs mandated by
16 the state to administer the assessments to all
17 kindergarten through 12th grade students, to report the
18 results to the state, to respond to state reviews, and to
19 train personnel in the requirements of the program.

20 This legislation required the State Board of
21 Education and the State Superintendent of Public
22 Instruction to design, implement and adopt statewide
23 academically rigorous content standard in reading,
24 writing and mathematics, to serve as the basis for
25 assessing the academic achievement of individual pupils

1 and schools, school districts in the California education
2 system.

3 The Standards-Based Accountability Program is
4 based upon the State's implementation of the federal
5 Title I mandate of the Improving America's Schools Act,
6 which required states and local educational agencies
7 receiving funding under this law to design and implement
8 pupil performance standards and assessments in
9 mathematics and language skills.

10 Staff finds the claimed Education Code sections
11 do not impose a new program or higher level of service on
12 the school districts because the statutes only impose
13 requirements on State Board of Education and the State
14 Superintendent. However, staff finds that the CDE, in
15 implementing the legislation, created a reimbursable
16 state-mandated program through executive orders directed
17 to the school districts for completing new reports as
18 part of their coordinated compliance review.

19 Finance's comments on the Draft Staff Analysis
20 state: "We concur with the staff analysis that the
21 relevant legislation does not create reimbursable
22 mandates. Also we concur with the staff analysis that
23 the documents developed by the CDE, dated June 30th,
24 1997, and April 15th, 1998, may have resulted in
25 state-mandated activities."

1 Staff recommends that the Commission adopt
2 staff's recommendations beginning on page 19 of the final
3 staff analysis.

4 Will the parties and witnesses please state your
5 names, for the record?

6 MR. PALKOWITZ: Good morning, Arthur Palkowitz
7 on behalf of Claimant San Diego Unified School District.

8 DR. BERG: Carol Berg for Education Mandated
9 Cost Network.

10 MR. WARDAK: Mohammed Wardak, Department of
11 Finance.

12 MR. WILKENING: Mike Wilkening, Department of
13 Finance.

14 CHAIR PORINI: Okay, Mr. Palkowitz, do you wish
15 to begin?

16 MR. PALKOWITZ: Yes, thank you very much.

17 As Katherine mentioned -- first of all, I'd like
18 to thank the staff for the analysis in this test claim.
19 Really, the issue, as Katherine mentioned, is the
20 reporting on the standards-based accountability, and
21 assessing whether a student is at or exceeding the
22 grade-level standards. This test claim has nothing to do
23 with the administration of the STAR Program.

24 We agree with staff that the CDE's memorandums,
25 dated June 30th and April 15th, require the districts to

1 fill out reports regarding that assessment, regarding the
2 methods used, and also for each site in this -- each
3 district to fill out reports on how the students are
4 progressing and whether they are meeting or exceeding the
5 grade-level standards established.

6 Based on that, it's clear that this requirement
7 is new, it's mandated by the state; and, therefore, we
8 believe it should be approved as a test claim.

9 The DOF's comments on this matter speak for
10 itself, in that they state that it may have resulted in
11 state-mandated activities. And also they believe that
12 training -- or at least we feel the training, which is
13 necessary to comply with state compliance -- these
14 reports -- should also be reimbursed.

15 Thank you.

16 CHAIR PORINI: All right, Ms. Berg?

17 DR. BERG: Yes, on behalf of the Education
18 Mandated Cost Network, again, we thank staff for their
19 evaluation and analysis of this test claim, and we
20 support their recommendations.

21 CHAIR PORINI: All right. Questions for the
22 claimants?

23 Ms. Steinmeier?

24 MEMBER STEINMEIER: This only pertains to two
25 years; correct?

1 MR. PALKOWITZ: Yes.

2 DR. BERG: Yes.

3 MEMBER STEINMEIER: Is that because those two
4 years were different or because this is only the
5 beginning of your claims?

6 DR. BERG: It emerged.

7 MEMBER STEINMEIER: Right.

8 DR. BERG: They are moving the target.

9 MEMBER STEINMEIER: Right. So those two years
10 were different than the subsequent years?

11 DR. BERG: They were the start-up cost. In
12 1997-98, the CDE said, "You're going to need to do this
13 much," and then in 1998-99, they said, "You need to do
14 this much."

15 CHAIR PORINI: All right, Department of Finance?

16 MR. WARDAK: We concur with staff
17 recommendations.

18 CHAIR PORINI: Okay. Questions -- now, is
19 anyone from the Department of Education here?

20 Have we had contact with CDE?

21 Up -- did you want to come forward and --

22 MR. SANCHEZ: Well, I'm not prepared to make any
23 statements on it. We have reviewed it, but we didn't
24 have any comments.

25 CHAIR PORINI: I think we need to have you come

1 forward and state your name for the record and make that
2 statement.

3 MR. SANCHEZ: I'm Juan Sanchez with the
4 California Department of Education. I'm in the fiscal
5 services area. And this particular test claim was
6 provided on the program but no comments were submitted
7 to it.

8 CHAIR PORINI: Okay thank you.

9 Any questions by Members?

10 Okay, any conclusions, staff?

11 MS. TOKARSKI: No, I think it's all there.

12 CHAIR PORINI: Okay, do I have a motion?

13 MEMBER STEINMEIER: Move approval of the staff
14 submission.

15 MEMBER LAZAR: I'll second it.

16 CHAIR PORINI: We have a motion by
17 Ms. Steinmeier, a second by Mr. Lazar.

18 May I have roll call?

19 MS. HIGASHI: Mr. Lazar?

20 MEMBER LAZAR: Yes.

21 MS. HIGASHI: Ms. Steinmeier?

22 MEMBER STEINMEIER: Aye.

23 MS. HIGASHI: Mr. Van Houten?

24 MEMBER VAN HOUTEN: Aye.

25 MS. HIGASHI: Ms. Williams?

1 MEMBER WILLIAMS: Aye.

2 MS. HIGASHI: Ms. Porini?

3 CHAIR PORINI: Aye.

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 CHAIR PORINI: Okay.

7 DR. BERG: Thank you very much.

8 CHAIR PORINI: Thank you.

9 MS. HIGASHI: We're now going to shift gears and

10 move into the incorrect reduction phase of our hearing

11 today. We have Items 4, 5, 6 and 7. They're all

12 incorrect reduction claims, based on the Graduation

13 Requirements program.

14 Since the parties and representatives are the

15 same for each of these items, we suggest that they all

16 come forward at this time. And if there's no objections,

17 staff suggests that the Commission hear testimony on all

18 of the items, then consider each item separately for

19 purposes of voting for specific questions.

20 CHAIR PORINI: Okay. So for the claimants on

21 4, 5, 6 and 7, is it acceptable to have these all heard

22 at the same time and voted on separately?

23 MR. SCRIBNER: Absolutely.

24 CHAIR PORINI: Great.

25 MS. HIGASHI: And the Controller's office?

1 CHAIR PORINI: Do you have any objections to
2 hearing all four of the items together?

3 MR. SILVA: We do not.

4 CHAIR PORINI: Thank you.

5 MS. HIGASHI: The Department of Finance?

6 MR. WILKENING: We have no objection, either.

7 MS. HIGASHI: These items will be presented by
8 Cathy Cruz.

9 MS. CRUZ: Good morning.

10 CHAIR PORINI: Good morning.

11 MS. CRUZ: Items 4, 5, 6 and 7 address the
12 incorrect reduction claims filed by 16 school districts
13 on the Graduation Requirements program. Section 1185(c)
14 of the Commission's regulations permits analyses of
15 incorrect reduction claims filed by different local
16 entities, to be combined if the claims contained similar
17 issues. Here, all 16 claims contend that the State
18 Controller's Office incorrectly reduced their claims for
19 costs associated with science teachers' salaries. While
20 these claims were grouped for purposes of analysis in
21 accordance with the claimants' arguments and the comments
22 submitted by the State Controller, a separate Statement
23 of Decision will be issued for each incorrect reduction
24 claim.

25 The State Controller asserts the claimants'

1 reimbursement claims were adjusted based on the
2 Commission's parameters and guidelines. The Controller
3 explained that reimbursement claims for teachers'
4 salaries were reduced entirely if the school district
5 failed to either identify any offsetting savings from
6 laying off teachers of non-mandated subjects or provide
7 documentation supporting the reason why there were no
8 offsetting statements.

9 The Department of Finance concurs with the
10 Controller's position.

11 There are two issues for consideration by the
12 Commission:

13 First, did the Controller reduce the claimants'
14 reimbursement claims in accordance with the Commission's
15 Parameters and Guidelines and the claiming instructions?

16 Staff finds that the Controller did perform
17 their reductions in accordance with the Parameters and
18 Guidelines and claiming instructions. The claims were
19 reduced because the claimants did not identify any
20 offsetting savings, nor did they provide sufficient
21 documentation to support their claims for teachers'
22 salaries.

23 The second issue: Should the methodology used
24 by the Controller to determine increased costs for
25 staffing under its audits of the Court-Ordered

1 Desegregation and Voluntary Integration programs be
2 compared to the methodology used to determine increased
3 costs for teachers' salaries?

4 Staff finds that this argument is misplaced
5 because these items have never been before the Commission
6 and are not before the Commission here. Accordingly,
7 staff finds that the claimants' contention has no bearing
8 on these incorrect reduction claims. Based on these
9 findings, staff finds that the State Controller did not
10 incorrectly reduce the claimants' reimbursement claims.

11 On July 9th, 2002, the claimants responded to
12 the staff analysis release on February 1, 2002, with the
13 contention that they, quote, "should be reimbursed for
14 the pay differential between the salary costs of those
15 teachers that should be let go and the cost of hiring new
16 science teachers," end quote. This proposal is
17 inconsistent with Parameters and Guidelines and claiming
18 instructions. The express language of the Parameters and
19 Guidelines provides reimbursement only for the difference
20 between increased costs of hiring new science teachers
21 and the savings from laying off teachers of non-mandated
22 subjects.

23 The claimants request that the Commission find
24 that the districts should be reimbursed for those costs
25 incurred related to pay differentials as outlined in the

1 Controller's claiming instructions. However, the
2 Commission does not have jurisdiction to address this
3 issue because the districts did not claim pay
4 differential as outlined in the Controller's claiming
5 instructions.

6 The claimants also contend that the districts
7 should be allowed to file claims based on the pay
8 differential, since they have been pursuing all costs
9 incurred for the hiring of science teachers. Again, the
10 Commission does not have jurisdiction to address this
11 issue because reimbursement claims are filed with the
12 State Controller. Based on a review of each incorrect
13 reduction claim filed by the 16 school districts, staff
14 recommends that the Commission deny all 16 incorrect
15 reduction claims.

16 Will the parties and representatives please
17 state your names for the record?

18 MR. SCRIBNER: David Scribner with Spector,
19 Middleton, Young & Minney, representing all the claimants
20 in this matter.

21 MS. BRUMMELS: Ginny Brummels, State
22 Controller's office.

23 MR. WARDAK: Mohammed Wardak, Department of
24 Finance.

25 MR. WILKENING: Michael Wilkening, Department of

1 Finance.

2 MR. SILVA: Shawn Silva, State Controller's
3 Office.

4 CHAIR PORINI: All right. Mr. Scribner, would
5 you like to begin?

6 MR. SCRIBNER: Sure. Good morning.

7 We are in disagreement with staff still; but
8 since the Graduation Requirements IRCs have long history,
9 we won't go into the specific issues.

10 The one issue that we have that staff does not
11 say they have jurisdiction on, relates to the pay
12 differential aspect. And, really, the only comment that
13 we have this morning, is that we would like it to be
14 recognized that we have the ability to resubmit claims,
15 if those districts can prove pay differential, based on
16 the language in the Parameters and Guidelines. These
17 IRCS -- or claims were initially filed for all costs for
18 hiring new science teachers. Staff is correct that we
19 didn't seek the pay differential at that time because it
20 was an issue of interpretation of what was allowed to be
21 claimed at the time.

22 We now have clarification that that is not what
23 should have been claimed; that we should have limited it
24 to pay differential. As such, we think we should not be
25 restricted, since we were seeking an administrative

1 remedy, to go back if those costs can be supported by
2 data in the districts to seek pay differentials.

3 Thank you.

4 CHAIR PORINI: Questions of Mr. Scribner?

5 All right. We'll move on to the Controller's
6 Office.

7 MR. SILVA: Shawn Silva with the State
8 Controller's Office.

9 We're in agreement with the staff analysis on
10 all 16 IRCs in this case.

11 CHAIR PORINI: All right, the Department of
12 Finance?

13 MR. WARDAK: We concur with the State
14 Controller's Office.

15 CHAIR PORINI: Questions or comments from
16 Members?

17 Any concluding comments from staff?

18 MS. SHELTON: Just with respect to
19 Mr. Scribner's request, the Commission's authority is
20 limited by Government Code Section 17551 to only hear and
21 decide those incorrect reduction claims before the
22 Commission. The Commission doesn't have jurisdiction to
23 tell the Controller that they have to receive resubmitted
24 claims. That would be purely up to the Controller and
25 under their discretion, so that's why we don't have

1 jurisdiction of that issue.

2 CHAIR PORINI: Do I have a motion from anyone on
3 this item -- on these four items?

4 We'll take up Item Number 4 first.

5 MS. HIGASHI: Right. We'd like Cathy to go
6 through each recommendation item by item.

7 CHAIR PORINI: Great.

8 MS. CRUZ: Staff recommends that the Commission
9 adopt the analysis prepared on Item 4, which recommends
10 denial of the incorrect reduction claims filed by Yuba
11 City Unified School District, John Swett Unified School
12 District, Stockton Unified School District, and Center
13 Unified School District.

14 CHAIR PORINI: Do I have a motion?

15 MEMBER WILLIAMS: Move the staff analysis to
16 reject the claims.

17 CHAIR PORINI: All right. We have a motion.
18 Do I have a second?

19 MEMBER LAZAR: I'll second.

20 CHAIR PORINI: We have a motion and a second.

21 Any further discussion on item Number 4?

22 All right, may I have roll call?

23 MS. HIGASHI: Ms. Steinmeier?

24 MEMBER STEINMEIER: Aye.

25 MS. HIGASHI: Mr. Van Houten?

1 MEMBER VAN HOUTEN: Yes.

2 MS. HIGASHI: Ms. Williams?

3 MEMBER WILLIAMS: Aye.

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: Mr. Lazar?

7 MEMBER LAZAR: Yes.

8 MS. HIGASHI: Ms. Porini?

9 CHAIR PORINI: Yes.

10 All right, that item carries.

11 That takes us to Number 5.

12 Ms. Cruz?

13 MS. CRUZ: Staff recommends that the Commission

14 adopt the staff analysis prepared on Item 5, which

15 recommends denial of the incorrect reduction claim as

16 filed by Vallejo City Unified School District, West

17 Contra Costa Unified School District, Novato Unified

18 School District, San Francisco Unified School District,

19 Dixon Unified School District, Eastside Union High School

20 District, and Linden Unified School District.

21 CHAIR PORINI: All right. Do I have a motion?

22 MEMBER WILLIAMS: I move to adopt staff analysis

23 on the IRCs.

24 CHAIR PORINI: Okay, I have a motion.

25 Do I have a second?

1 MEMBER STEINMEIER: Second.

2 CHAIR PORINI: We have a motion and a second to
3 adopt staff's recommendation.

4 All those -- let's see, we'll go ahead and do
5 roll call.

6 MS. HIGASHI: You can do a voice vote, if you
7 want. I'll call it.

8 Ms. Williams?

9 MEMBER WILLIAMS: Aye.

10 MS. HIGASHI: Mr. Barnes?

11 MEMBER BARNES: Aye.

12 MS. HIGASHI: Mr. Lazar?

13 MEMBER LAZAR: Aye.

14 MS. HIGASHI: Ms. Steinmeier?

15 MEMBER STEINMEIER: Aye.

16 MS. HIGASHI: Mr. Van Houten?

17 MEMBER VAN HOUTEN: Aye.

18 MS. HIGASHI: Ms. Porini?

19 CHAIR PORINI: Aye.

20 All right. That takes us to item Number 6.

21 MS. CRUZ: Staff recommends that the Commission
22 adopt the staff analysis prepared on Item 6, which
23 recommends denial of the incorrect reduction claims filed
24 by Lake Tahoe Unified School District and Simi Valley
25 Unified School District.

1 CHAIR PORINI: Okay, do I have a motion?

2 MEMBER WILLIAMS: I'd like to move that we adopt

3 staff analysis.

4 CHAIR PORINI: All right. Do I have a second?

5 MEMBER VAN HOUTEN: I second.

6 CHAIR PORINI: We have a motion and a second.

7 May I have roll call?

8 MS. HIGASHI: Mr. Barnes?

9 MEMBER BARNES: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MEMBER LAZAR: Aye.

12 MS. HIGASHI: Ms. Steinmeier?

13 MEMBER STEINMEIER: Aye.

14 MS. HIGASHI: Mr. Van Houten?

15 MEMBER VAN HOUTEN: Aye.

16 MS. HIGASHI: Ms. Williams?

17 MEMBER WILLIAMS: Aye.

18 MS. HIGASHI: Ms. Porini?

19 CHAIR PORINI: Aye.

20 All right, that takes us to Item Number 7.

21 MS. CRUZ: Staff recommends that the Commission

22 adopt the staff analysis prepared on Item 7, which

23 recommends denial of the incorrect reduction claims filed

24 by El Dorado Union High School District, Galt Joint Union

25 High School, and Lincoln Unified School District.

1 CHAIR PORINI: Do I have a motion?

2 MEMBER WILLIAMS: You do. I move staff analysis
3 to reject the claims.

4 CHAIR PORINI: And a second?

5 MEMBER VAN HOUTEN: I'll second.

6 CHAIR PORINI: All right, I have a motion and a
7 second.

8 May I have roll call?

9 MS. HIGASHI: Mr. Lazar?

10 MEMBER LAZAR: Aye.

11 MS. HIGASHI: Ms. Steinmeier?

12 MEMBER STEINMEIER: Aye.

13 MS. HIGASHI: Mr. Van Houten?

14 MEMBER VAN HOUTEN: Aye.

15 MS. HIGASHI: Ms. Williams?

16 MEMBER WILLIAMS: Aye.

17 MS. HIGASHI: Mr. Barnes?

18 MEMBER BARNES: Aye.

19 MS. HIGASHI: And Ms. Porini?

20 CHAIR PORINI: Aye.

21 MS. HIGASHI: Thank you.

22 CHAIR PORINI: All right, thank you all very
23 much.

24 CHAIR PORINI: We now have to take just half a
25 second here to change binders.

1 (A brief break was taken to change binders.)

2 CHAIR PORINI: All right, we'll go ahead and
3 begin on Item Number 8.

4 MS. HIGASHI: We're on Item 8. And Paul Starkey
5 will present this item, which is reconsideration of the
6 Comprehensive School Safety Plans Statement of Decision.

7 CHAIR PORINI: Paul?

8 MR. STARKEY: Good morning. This matter is
9 before the Commission on reconsideration. This hearing
10 is conducted to determine if the final decision on
11 Comprehensive School Safety Plans is contrary to law.
12 A supermajority of five affirmative votes is required to
13 change a final decision.

14 Some background: On August 23rd, 2001, the
15 Commission adopted the Statement of Decision in
16 Comprehensive School Safety Plans. The Statement of
17 Decision concerns the prevention of crime and violence in
18 California's public schools through the writing,
19 developing and adopting of Comprehensive School Safety
20 Plans. The safety plan must include routine and
21 emergency disaster procedures.

22 The Statement of Decision in Comprehensive
23 School Safety Plans takes notice of the findings and test
24 claim CSM 4241, Emergency Procedures, Earthquake and
25 Disasters, decided in 1987. CSM 4241 concerns the

1 establishment of an earthquake emergency procedure
2 system.

3 The State Controller's Office and Long Beach
4 Unified School District filed separate timely requests
5 for reconsiderations to correct alleged errors of law.
6 The grounds are set out in the staff's recommendation.

7 After a hearing on October 8th, 2001, the
8 Commission adopted staff's recommendation to grant the
9 petitions for request for reconsideration. The
10 Commission further directed staff to schedule the matter
11 of the reconsideration and the amendment to the
12 Parameters and Guidelines for CSM 2241 for the same
13 hearing, which is the latter item, which is Item 9 on
14 today's agenda.

15 For this item, the sole issue before the
16 Commission is whether it should exercise its discretion
17 to grant the request for reconsideration of the
18 Commission's final decision. The Commission is being
19 asked to reconsider this decision for possible
20 clarification. As set out in the recommendations, staff
21 recommends that the Commission amend the Statement of
22 Decision in Comprehensive School Safety Plans, to clarify
23 that emergency procedures in CSM 4241 refers to emergency
24 procedures for earthquake safety, and to make other
25 technical corrections in this particular decision.

1 Will the parties and witnesses state their names
2 for the record?

3 MR. SCRIBNER: David Scribner with Spector,
4 Middleton, Young and Minney, representing Long Beach
5 Unified School District.

6 DR. BERG: Carol Berg, Education Mandated Cost
7 Network.

8 MR. BLACK: Cheryl Black, Department of Finance.

9 MR. SILVA: Shawn Silva, State Controller's
10 office.

11 CHAIR PORINI: All right. Mr. Scribner, would
12 you like to begin?

13 MR. SCRIBNER: Sure.

14 We're in general agreement with the revised
15 Statement of Decision. However, most of our comments
16 that will relate to the actual implementation of this
17 revised Statement of Decision will be brought up in
18 Item 9 because they go more to more to the actual nuts
19 and bolts of how this is going to happen for the past
20 fiscal year. We agree that the Statement of Decision, as
21 revised by staff, is accurate and the best thing for us
22 to move forward with; however, not necessarily the best
23 thing for us to apply for the previous year. As I said,
24 we will get into that in more specifics in Item 9.

25 Thank you.

1 CHAIR PORINI: Ms. Berg?

2 DR. BERG: Yes, our concern is really related
3 more to Item 9; and that is that we're one of the few
4 parties that was alive and well when this earthquake
5 emergency disaster preparedness came before you,
6 initially, a claim developed by Los Angeles Unified
7 School District. And our concern is that there's a
8 portion in Item 9 that exceeds the earthquake limitation
9 requested by the State Controller's Office. It also
10 includes the other disasters -- fire, flood, et cetera,
11 when the Red Cross take over your properties. And I want
12 to be sure that that is brought to your attention
13 initially, as you consider this claim, so it's not
14 delimited and we don't make another mistake where we have
15 to come back to you.

16 Thank you.

17 CHAIR PORINI: Okay, questions for claimants?

18 Department of Finance?

19 MS. BLACK: We have no objection to the
20 Commission staff's proposed changes to previous statement
21 decision.

22 CHAIR PORINI: Okay, Controller's office?

23 MR. SILVA: We would concur with the Commission
24 staff analysis.

25 CHAIR PORINI: All right. Are there any

1 questions from Members?

2 MEMBER STEINMEIER: I just have a comment.

3 CHAIR PORINI: Yes, Ms. Steinmeier?

4 MEMBER STEINMEIER: My comment is I really
5 appreciate the fact that both the claimants and the
6 Controller's office recognize that the previous Statement
7 of Decision, as it currently stands, is going to cause
8 confusion. And I do appreciate the fact that you both
9 brought it to our attention. I encourage that kind of
10 activity. We don't deliberately set those things up; it
11 just sometimes happens. So thank you very much for your
12 bringing this to our attention.

13 CHAIR PORINI: Okay, any other comments?

14 So on Item Number 8, do we have a motion?

15 MEMBER LAZAR: I'll make a motion to move the
16 staff analyses.

17 CHAIR PORINI: Okay. We have a motion --

18 MEMBER STEINMEIER: Second.

19 CHAIR PORINI: And a second by Ms. Steinmeier.

20 May I have roll call?

21 MS. HIGASHI: I'd just like to clarify.
22 My understanding is when you made your motion to adopt
23 the staff analysis, you also included adoption of the
24 pink sheets --

25 MEMBER LAZAR: Yes, I did.

1 MS. HIGASHI: Thank you -- which is the
2 Statement of Decision, as revised.

3 Mr. Lazar?

4 MEMBER LAZAR: Yes.

5 MS. HIGASHI: Ms. Steinmeier?

6 MEMBER STEINMEIER: Aye.

7 MS. HIGASHI: Mr. Van Houten?

8 MEMBER VAN HOUTEN: Aye.

9 MS. HIGASHI: Ms. Williams?

10 MEMBER WILLIAMS: Aye.

11 MS. HIGASHI: Mr. Barnes?

12 MEMBER BARNES: Aye.

13 MS. HIGASHI: Ms. Porini?

14 CHAIR PORINI: Aye.

15 MS. HIGASHI: Thank you.

16 The motion carries.

17 CHAIR PORINI: All right. That takes us to Item
18 Number 9.

19 CHAIR PORINI: Nancy Patton will present
20 Item Number 9, which is the Proposed Parameters and
21 Guidelines, amendment for Emergency Procedures,
22 Earthquake and Disasters.

23 CHAIR PORINI: Please begin.

24 MS. PATTON: Good morning. The Emergency
25 Procedures Earthquake and Disasters program requires the

1 governing body of each school district, private school,
2 and county superintendent of schools to establish an
3 earthquake emergency procedure in each school building
4 under their jurisdiction. The Parameters and Guidelines
5 provide for reimbursement for the costs to establish
6 emergency procedures and to train employees and students
7 in earthquake disaster procedures.

8 The State Controller's Office is requesting that
9 the Emergency Procedures Earthquake and Disaster
10 Parameters and Guidelines be amended to clarify that the
11 program only includes preparation of earthquake plans.

12 Before you are the claimants' Proposed
13 Parameters and Guidelines for the Emergency Procedures
14 Earthquakes and Disasters program, as modified by staff.

15 Staff edited the requesters' proposed
16 P's and G's to identify the reimbursable activities as
17 one-time or ongoing, and made revisions to the
18 boilerplate sections of the Parameters and Guidelines
19 to conform to boilerplate language recently adopted by
20 the Commission.

21 This morning we passed out proposed technical
22 questions to the P's and G's. And you'll find them on
23 the yellow sheet of paper in front of you.

24 We are proposing to clarify that the proposed
25 amendments do not allow reimbursement claims that were

1 filed prior to 2001-02 to be refiled.

2 Staff recommends that the Commission adopt the
3 claimants' Proposed Parameters and Guidelines, as
4 modified by the staff, beginning on page nine.

5 Will the parties and representatives please
6 state their names for the record?

7 MR. SCRIBNER: David Scribner, Spector,
8 Middleton, Young and Minney, representing Mandated Cost
9 Systems.

10 DR. BERG: Carol Berg, Education Mandated Cost
11 Network.

12 MS. BLACK: Cheryl Black, Department of Finance.

13 MR. SILVA: Shawn Silva, State Controller's
14 Office.

15 CHAIR PORINI: All right, Mr. Scribner, would
16 you like to begin?

17 MR. SCRIBNER: Sure.

18 Well, my first issue on the reimbursement staff,
19 period, staff took care of that. That's great. We
20 appreciate the clarification in the language on the
21 P's and G's. As it was drafted before, it was unclear
22 whether or not you could go back, and this closes that
23 door, so we thank staff for that.

24 What we have here is the retroactive
25 applications of the Parameters and Guidelines amendment.

1 What essentially has happened is that the emergency
2 portion language is being removed here and, once this is
3 all done, placed in the Comprehensive School Safety Plans
4 test claim and reimbursement program. The problem we
5 have with that is, we have 5,000+ school sites that have
6 already submitted documentation to the Mandated Cost
7 Systems on the Parameters and Guidelines and Statement of
8 Decision for EPED, as it was laid out. And clarification
9 was sought by staff on June 28th, 2001. And staff at
10 that time said that emergency procedures are part of the
11 EPED Parameters and Guidelines and, therefore, they're
12 not part of Comprehensive School Safety Plans. Based on
13 that clarifications, Mandated Cost Systems went out, did
14 the standard reporting for the 2001-2002 school year, and
15 we now have all of this documentation that includes not
16 only earthquake -- the earthquake portion of the
17 procedures, but also the emergency portion.

18 If the Parameters and Guidelines amendment
19 is not made to be prospective, 2002-2003, what will
20 happen is that we'll have to go back to 5,000+ school
21 sites and redo the documentation.

22 We can do that. That's fine. That just means
23 it's an increase in the mandated reimbursement process.
24 It's an increase cost to the state. It's an increased
25 cost to the school districts. And we can avoid that by

1 making this a "prospective" only. And that would be our
2 request today. We agree with the amendment and we think
3 that the PGA now -- the Parameters and Guidelines
4 amendment, I'm sorry -- is accurate in Comprehensive
5 School Safety Plans and would assume the clarification
6 that Dr. Berg will bring up, I think will help everyone
7 in the claiming process, but it will incur additional
8 costs to the state if it's retroactive, as it's laid out
9 in the Government Code.

10 But I don't know from staff if the Commission
11 has the authority to say this is "prospective" only. We
12 would just say -- we would make that request that we do
13 make this applicable to 2002-2003.

14 Thank you.

15 CHAIR PORINI: Ms. Berg?

16 DR. BERG: Our concerns are very different in
17 nature. And, again, I'm seeking just clarification so
18 that we don't have any more misinterpretation.

19 If you look at the summary of the mandate that's
20 on page nine, the second paragraph indicates that the
21 statutes of 1984, Chapter 1659, added Section 40041.5
22 to the Ed. Code, and amended Section 40042 to require
23 that "the governing board of any school district shall
24 grant the use of school buildings, grounds and equipment
25 to public agencies, including the American Red Cross, for

1 mass care and welfare shelters" -- now this is the
2 important part -- "during disasters or other emergencies
3 affecting the public health and welfare."

4 From the time this claim was approved initially
5 by this commission, that portion has, in fact, been
6 applied to floods, to fires, and to the general
7 application of the Red Cross taking over the school
8 facilities in other disasters, those other than just
9 earthquake emergencies. And for that reason, we would
10 indicate that our preference would be to have Section B,
11 on page 11, that indicates mass care and welfare shelters
12 be tagged with an additional title that indicates it
13 includes earthquakes and other disasters, as deemed
14 appropriate.

15 Otherwise, what happens is, you go back to
16 Section A, and it says, "earthquake emergencies," and
17 that is not the scope -- the entire scope of this
18 particular mandate.

19 Those are our concerns.

20 Thank you.

21 CHAIR PORINI: Ms. Patton, did you want to
22 comment on that?

23 MS. PATTON: We never intended to change any of
24 the existing P's and G's for this "Mass Care and Welfare
25 Shelters" section. So I think adding that to the title

1 would be acceptable.

2 DR. BERG: Thank you.

3 CHAIR PORINI: Okay. Questions or comments for
4 the claimants?

5 The Department of Finance?

6 MS. BLACK: We have no objection to the
7 Commission staff's proposed changes to the P's and G's.

8 CHAIR PORINI: Okay. State Controller's Office?

9 MR. SILVA: In general, we're in agreement with
10 the Commission staff's analysis.

11 As to the minor amendment made, our office has
12 never interpreted the Mass Care and Welfare Shelters to
13 be limited by any specific type of emergency. We just
14 would -- I'm not sure about the language "as deemed
15 necessary." It's rather vague. But to say "for any type
16 of emergency," to clarify that, so there's no mistake, we
17 would not object to that.

18 One other concern that comes up is the
19 calculation under Section 1183.2(c) of the regulations,
20 which is on the yellow sheet, which has been handed out
21 to everyone, at the second-to-the-last paragraph, which
22 is double-underlined. And if you look at the language in
23 that paragraph, the calculation would actually apply to
24 fiscal year 2000-2001. It states that "must be submitted
25 on or before January 15th, following a fiscal year, in

1 order to establish eligibility for reimbursement for that
2 fiscal year." And I read that language as saying at the
3 end of that fiscal year, at the completion of that fiscal
4 year. And in September of 2001, when the amendment was
5 submitted, that was before January 15th, following the
6 fiscal year 2000-2001, not 2001-2002.

7 As to the issue proposed by claimants concerning
8 "prospective" versus "retrospective," we have no real
9 position, although we believe that we would be -- the
10 Commission would be limited by its own regulations on
11 point.

12 CHAIR PORINI: Okay, questions for Mr. Silva?

13 Ms. Steinmeier?

14 MEMBER STEINMEIER: Under the revised version,
15 do you believe that there's now little chance of
16 duplicate -- applying for the same activity under both
17 "8" and "9," or have we sorted this out well enough for
18 your office?

19 MR. SILVA: I believe that there's fairly
20 careful delineation, and that there's not going to be an
21 overlap.

22 Obviously, as the claimants have raised, there's
23 still the issue of looking back. And we see that, in a
24 sense, as two separate issues, although interrelated.
25 One question would be: What did the P's and G's mean

1 back in the past, when applied to those prior claims, as
2 the staff determines? That would just simply be a
3 statutory -- a language analysis of what that meant.
4 Although we believe that it was limited to earthquake
5 back then, that's always been our position, that that
6 would be a separate issue from whether the P's and G's
7 from now and into the future should be clarified to
8 specifically and clearly limit to earthquake only under
9 4241 and all others under the comprehensive safety plan.

10 CHAIR PORINI: Other questions?

11 Staff, did you want to comment on the issues
12 of -- the dates, going backward?

13 MS. PATTON: I will comment on the issue of
14 whether it begins 2001-02. I think Mr. Silva might be
15 right, that it should be 2000-2001.

16 And I believe Mr. Starkey is going to comment on
17 Mr. Scribner's concerns.

18 CHAIR PORINI: All right, Mr. Starkey?

19 MR. STARKEY: In terms of what's been raised
20 today, I have a concern. I think I'm going to ask if
21 we can take this back for some additional briefing.
22 My concern is that the matter raised by Ms. Berg, the
23 interpretation, even though it's not opposed, at least on
24 the face of it by the Department of Finance, we have not,
25 I don't think, done any analysis or really addressed the

1 particular issue that she has raised with respect to how
2 the Statement of Decision and the Parameters and
3 Guidelines in this particular case -- how they affected
4 the issue of emergency shelters and the use of it by the
5 Red Cross.

6 We can proceed, if the Commission wants to, but
7 my recommendation would be that staff take it back and
8 look at it in light of what she raised, to make sure that
9 if we amend the Parameters and Guidelines the way that
10 she's suggesting, that that, in fact, is consistent with
11 the statute and the Statement of Decision. So I wanted
12 to raise that point.

13 I see some befuddled looks, and I apologize.
14 I have not -- that particular argument I don't see having
15 been addressed in our recommendation. So this is
16 something new, and my concern is that without going back
17 and checking the statutes, we might make another mistake.

18 DR. BERG: No, please don't do that,
19 Mr. Starkey.

20 CHAIR PORINI: All right.

21 DR. BERG: Please don't do that.

22 The reason I want clarification is simply
23 because there has at this point not ever been a
24 difficulty between the claimants, the interpretation of
25 that section, nor with the Controller's interpretation of

1 the claims when received. That one is really clear-cut.

2 The only thing I am commenting on is the way
3 it's structured under Sections A and B. And all I'm
4 asking for is clarification with a few words as applied
5 to emergency and other procedures. That's simple
6 language. No law issue, no confusion here; just a
7 simple, straightforward matter that is really very much a
8 matter of fact and history.

9 So I plead with you to take action on this
10 today.

11 CHAIR PORINI: Mr. Starkey?

12 MR. STARKEY: My only point is that I don't
13 think there's any development of that particular issue
14 in this record, other than what's here at the hearing
15 today. And if the Commission wants to proceed, then they
16 can, based upon the representations.

17 CHAIR PORINI: All right, so basically what
18 you're suggesting is that if there are ever conflicts in
19 the future, we have not had a complete staff analysis of
20 that issue, or at least nothing that's in print. And so
21 staff would feel more comfortable if we did at least
22 examine that and include it in the record.

23 Ms. Berg is making the recommendation that we
24 move forward on it. I have one concern personally, and
25 that's that there seems to be a difference in terms of

1 language. So we don't necessarily have the language
2 before us today. I think Mr. Silva thought the words
3 might be different than Ms. Berg. Staff hasn't opined
4 on that. And then staff further came back and suggested
5 that perhaps the date needed to be corrected. I don't
6 know how members feel. I'd be a little more comfortable
7 if we came back with those issues corrected before us,
8 for a vote.

9 Ms. Steinmeier?

10 MEMBER STEINMEIER: I have a question. One for
11 Ms. Berg and one for Mr. Starkey.

12 Ms. Berg, what's the downside of waiting?

13 DR. BERG: Well, at this point, probably none;
14 other than I would like to make the statement for the
15 record that this was briefed thoroughly when we did this
16 back in 1988, I believe is when you heard it. And so
17 there is an extensive record on that topic. And I just
18 hate to have you folks and your staff spend time on
19 something that doesn't need to be.

20 We're open and we're in agreement with the State
21 Controller's Office. I think they agree that a
22 clarification -- we can live with any language that your
23 staff attorneys put forward. It's not that big a deal.
24 And I just hate to have you spend more time on it,
25 frankly.

1 MEMBER STEINMEIER: Understood.

2 Mr. Starkey is just a little bit shell-shocked
3 because he's got so much litigation going, that I know
4 what he's trying to do. And I appreciate that. And for
5 that reason, I would concur with you, Mr. Starkey, that
6 there have been a lot of things thrown around here. And
7 as the Chairwoman just mentioned, we're not exactly sure
8 what that language is supposed to be. But if you feel --
9 and I'm assuming you do -- that we need to have something
10 in writing, so that if this should ever be challenged,
11 that we'd have a solid staff analysis on this minor
12 matter, but nevertheless minor matters sometimes get
13 blown into major ones. Is that what you're saying?

14 MR. STARKEY: That's correct. And thank you,
15 I appreciate that.

16 CHAIR PORINI: Okay.

17 MS. HIGASHI: I'd just like to add, I've been
18 checking the Ed. Code, and I'm having difficulty locating
19 the section 40041.5, and that's the concern I have.

20 CHAIR PORINI: The missing Ed. Code.

21 MS. HIGASHI: It could have been moved.

22 MEMBER STEINMEIER: I think we need to postpone
23 this then.

24 CHAIR PORINI: Okay. Can I ask that we bring
25 this back no later than two months from now?

1 MR. STARKEY: Absolutely.

2 CHAIR PORINI: Hopefully next month. I
3 recognize the claimants' concern about moving forward
4 with it, and it sounds like it should not be difficult.
5 If that's all right.

6 Mr. Barnes?

7 MEMBER BARNES: Just -- will that also include
8 the discussion to look into the date issue that Mr. Silva
9 brought up?

10 CHAIR PORINI: Yes, I think we would direct
11 staff to look at all of those issues: The language
12 change, the date issue, as well as just including in our
13 record some sort of briefing on that.

14 All right, so we'll move on then to Item
15 Number 10, rulemaking.

16 CHAIR PORINI: Item 10 is the Commission order
17 to initiate rulemaking. This item will be presented by
18 Shirley Opie.

19 MS. OPIE: Good morning.

20 CHAIR PORINI: Good morning.

21 MS. OPIE: A proposed order to initiate
22 rulemaking is before you. This rulemaking will implement
23 the amendments to the mandate reimbursement process that
24 were required by AB 1679.

25 Let's see, I'd like to go through just a few of

1 the major provisions that are included in the changes.
2 There are some changes to the definitions, including
3 revising the definition of "amendment," adding a
4 definition of "claimant," revising the definition of
5 "filing date," and changing the definition of "test
6 claim."

7 Provisions are added for accepting more than one
8 test claim on the same statute or executive order.

9 The provisions for incorrect reduction claims
10 are now consolidated in one section. And it specifies
11 the requirements for filing incorrect reduction claims,
12 and adds that the State Controller office has 90 days
13 to review the plans.

14 Provisions related to reviewing the State
15 Controller's claiming constructions are moved to
16 Article 6; and it's renamed just that, Review of the
17 Office of State Controller's Claiming Instructions.

18 And, let's see, in the event that Commission
19 determines that the instructions do not conform to the
20 Parameters and Guidelines, the Commission would direct
21 the Controller to modify the instructions.

22 Section 1188.5, which is amendment of a prior
23 final decision, is repealed because this section relied
24 on Government Code Section 17559, which was changed by
25 AB 1679, and now provides a statutory basis for

1 reconsideration and amendment of prior decisions.

2 This regulation is inconsistent with the framework
3 for amending a prior final decision.

4 Staff's draft proposed text is attached as
5 Attachment B or Exhibit B.

6 If the order is adopted, staff will proceed with
7 the following timetable:

8 August 9th it would be established through the
9 Office of Administrative Law's notice.

10 September 25th would be the end of the public
11 comment period, and a public hearing will be held if
12 requested.

13 October 24th, regulations will be proposed for
14 adoption by the Commission.

15 October 31st, the adopted regulations would be
16 filed with the Office of Administrative Law.

17 Staff recommends the Commission adopt proposed
18 Order 02-1.

19 CHAIR PORINI: Okay, do we have any questions by
20 Members of the Commission at this point in time?

21 Do we have any comments from the public at this
22 point in time, knowing that this is just the beginning of
23 our regulatory process?

24 Okay, Mr. Barnes?

25 MEMBER BARNES: May I ask Mr. Silva to help me

1 out a little bit on this?

2 The one part of these regulation changes that
3 we're a little unclear about, is the part from 1188.5 to
4 be deleted. I understand the argument for why this is
5 proposed to be deleted; but it does seem that the basis
6 for this argument, which is the change by adding
7 Section A, 17559, which seems to be dealing almost
8 exclusively with reconsiderations; whereas the 1188.5
9 basically seems to be dealing with changes that come
10 about as the law changes, are two separate issues. And
11 it seems like the only linkage that there has been to
12 maybe change that, is that in the new "A," while almost
13 every sentence that contains a discussion, talks about
14 "reconsideration," the second sentence seems to talk
15 about "reconsideration" or "amend a test claim." It
16 seems to me that the "amend" is kind of linked to the
17 reconsideration issue here.

18 So I guess our feeling is that we've sort of
19 opened this envelope here about what that "or amend" says
20 here, to take out a regulation that seems to still be
21 justified based upon this statute -- that part of the
22 statute that was still there, that justified it, in the
23 first place.

24 So I guess I'd raise a question as to whether or
25 not that particular regulation should be offered up for

1 repeal.

2 CHAIR PORINI: Thank you.

3 Ms. Opie, or Shawn? Either one.

4 MR. STARKEY: I can address that.

5 CHAIR PORINI: All right, Mr. Starkey?

6 MR. STARKEY: I think those are very good
7 observations. And it's a very interesting set of
8 regulations we currently have. The point of view that
9 I'm coming at this from, is that when the -- prior to
10 the Legislature speaking, and saying what the power of
11 reconsideration was, I think it was arguable that the
12 Commission might have had the power to have that
13 regulation to amend, to conform with changes in the law.

14 I think that when the Legislature comes in and
15 says, "We're going to define for you what your power is.
16 We're going to say that you have this reconsideration
17 power," I think there's a strong argument that we need
18 to say that the Commission's authority is going to derive
19 simply from that legislative change; and that the only
20 authority they have is to reconsider within the confines
21 of that amendment.

22 Now, for purposes of this process, I would
23 invite any interested party to provide any arguments that
24 they have as to why that should stay. But it is our view
25 that when the Legislature comes in and makes a change

1 like that, substitutes a change to the finality, the
2 power of the Commission to change the finality of the
3 decision, then basically, you're left with basically one
4 road to go down, in terms of reconsideration.

5 But I would encourage anyone who has any
6 thoughts about that, to file anything with us, so we can
7 take a look at it and see if, in fact, we are making the
8 proper choice.

9 I don't know how clear -- it's probably a lot of
10 legal mumbo-jumbo, and I apologize for that.

11 The general rule is that commissions and boards,
12 once they make a decision, they're done, and they lose
13 their jurisdiction. There is authority for some limited
14 amount of jurisdiction to review a decision, to make
15 changes to correct mistakes and things like that.
16 Without the Legislature saying anything, I think we're
17 in a good position to argue and define what we think our
18 ability to do in this area is based on all the existing
19 cases in common law. When the Legislature comes in and
20 says, "You have this power; you have this power for a
21 limited number of days," I think that you have to have
22 some strong reasons to have in place a separate rule that
23 seems to basically create an exception that could swallow
24 the Legislature's statement.

25 So that's what our concern is, and we want to

1 take a look at it. We'll look at anything anyone has to
2 offer. And it will be more briefed, I think, as we get
3 to the final adoption stage.

4 MEMBER BARNES: Could I --

5 CHAIR PORINI: Mr. Barnes?

6 MEMBER BARNES: Just one question. Where is
7 it -- then if these regulations are adopted as it is,
8 where is it in the regulation that talks about our
9 process for dealing with law changes?

10 MR. STARKEY: We would look to the existing
11 statements of the court and existing law with respect
12 to whether we have the ability to even do that. And it's
13 a real question.

14 And so, again, given the fact that the
15 Legislature has made this amendment and has imposed
16 restrictions, we do not see that that authority is there
17 any longer for that separate ability to amend.

18 Basically, once the Commission makes a decision,
19 it has made its decision, and you have limited reasons
20 for reconsideration. And it goes to the fact that you
21 want to have a finality of decision; that's one
22 consideration. And the other consideration is you want
23 to have correct decisions.

24 But it's a completely separate matter to say
25 that you come in years later and correct decisions you've

1 already made, to conform to law that's changed. There
2 may not be any authority for that whatsoever. In other
3 words, once you've made your decision, you've made your
4 decision; and there are other ways to challenge the
5 decisions.

6 MEMBER BARNES: Well, so you seem to be making a
7 contention that this legislation has eliminated our
8 authority to change things when the law is changed on a
9 particular mandate?

10 MR. STARKEY: What I'm saying is that, by virtue
11 of this particular amendment that went to a
12 reconsideration, the Legislature, where it had not spoken
13 before, spoke in a way that seems to say that the
14 Commission has jurisdiction for a limited time to
15 reconsider, for any reason. But after that period of
16 time, they no longer have jurisdiction. They simply do
17 not have the power to act.

18 And so, again, this is relatively complicated,
19 in the sense that there are, believe it or not, a number
20 of court cases, conflicting attorney general opinions.
21 We have a case involving this commission in an
22 unpublished decision, which talks about the
23 reconsideration issue. So it is something that needs
24 to be worked through carefully.

25 And, again, I think that your observations are

1 good ones; and all we're trying to do is to make sure
2 that we haven't got a regulation out there that simply
3 does not derive from any statutory authority.

4 CHAIR PORINI: Mr. Barnes?

5 MEMBER BARNES: Well, then I guess what you're
6 saying is that it's a little unclear; and I guess I'm not
7 sure why we're then making a definitive statement that we
8 agree that regulation ought to come out when, in fact,
9 perhaps that's the kind of thing that ought to come out
10 and be discussed and evaluated during the adoption
11 hearing process.

12 I guess that I would feel it would be better for
13 us to go in, leaving this regulation by itself
14 considering a little bit of uncertainty -- or perhaps
15 even a lot of uncertainty -- about whether that
16 particular change, you know, intended to have this effect
17 or not.

18 So is there any reason why we shouldn't go ahead
19 with this proposed regulations with this being left in,
20 and let something come up during that process, rather
21 than making a definitive decision right now that this is
22 what we should do?

23 MR. STARKEY: This is not a definitive decision.

24 This is simply notice that we have looked at the
25 legislative change. And based upon that legislative

1 change, we think that this is something that should be
2 done. And so, again, we will invite comment from all
3 parties to express their thoughts about whether or not
4 this should stay in or come out. So it is not in any
5 way, shape or form, final at all, it's just the beginning
6 of the process.

7 But at the beginning of the process, in my
8 opinion, when the Legislature has spoken in an area,
9 it seems to me that we should -- the general presumptions
10 are that particular regulation probably no longer has any
11 life because it doesn't have any statutory -- it doesn't
12 appear to have any statutory authority. I could be
13 wrong; but at this initial stage, that's where I'm
14 looking at.

15 CHAIR PORINI: Mr. Barnes?

16 MEMBER BARNES: I promise this will be the last.

17 I guess the only thing about the regulation --
18 the legislation change, is that the section that was
19 used -- the wording that was used to justify this
20 section, in the first place, is totally unchanged. The
21 only thing that has been added to that section, is a new
22 subpart A. Subpart B constitutes what was there before.
23 Subpart A is the new stuff, and it appears to deal
24 almost solely, except for one brief comment, that "or
25 amend with reconsideration." And you have taken the

1 reconsideration issues, and you have included that
2 within, you know, the sections here that deal with
3 strictly reconsideration issues.

4 So I guess it seems to me that it's more
5 appropriate to say that the Legislature may have wanted
6 to give us a lot of clarification about what to do with
7 reconsideration, but chose not to make any changes at
8 all in the wording and language that had to do with this
9 particular justification for a regulation, in the first
10 place.

11 So, again, my own feeling is that -- or our
12 feeling is that we should go ahead with the regulation
13 changes because we think it's appropriate. But we think
14 that this part of the recommendation should be left out
15 and retained as it is, and that allows people during the
16 adoption process to raise this as an issue rather than
17 our making a decision -- definitive decision up-front
18 that says, "This is where we go."

19 CHAIR PORINI: Okay, and I think we're both
20 trying to get to the same point, to get comment on this
21 particular section, but going about it in different ways.

22 Shirley?

23 MS. OPIE: If I might. Just procedurally,
24 I think if this regulation did not show up in the package
25 as being proposed to be repealed, it would not be in

1 front of people to comment on. So just to keep that in
2 mind.

3 CHAIR PORINI: Mr. Barnes?

4 MEMBER BARNES: I'm sorry, I promised it would
5 be the last, but those that know me know that there's
6 never a last.

7 MEMBER STEINMEIER: You never should have said
8 that, Mr. Barnes. That was a big mistake.

9 MEMBER BARNES: That's right.

10 I guess -- and again, it goes back to my own
11 experiences in putting regulations together, that
12 the people will look back to the law and determine
13 whether or not the regulation -- proposed regulation
14 changes, additions, subtractions, are complete or not.
15 So my experience has been that people who feel that this
16 repeal, in fact, ought to take place, you know, can raise
17 it, put it on the table, and it can get dealt with in
18 that place.

19 So I guess my concern is that by laying it out
20 here in the regulation package that we're proposing as
21 adopting, implies that we agree with that change. And I
22 just -- well, we don't agree with it and, you know, we
23 hope that the Commission itself would go along with
24 taking this part out, as far as the change goes.

25 CHAIR PORINI: Okay, comments from other

1 Commissioners?

2 Ms. Steinmeier?

3 MEMBER STEINMEIER: It's one question for
4 Mr. Starkey. If this last section is stricken, what
5 happens if the Legislature changes a law that we
6 previously found as a mandate, or eliminates the mandate?

7 That discussion is going on right now in this building.

8 What would be the procedure that would be followed then?

9 What -- we don't do anything? We don't act at all, and
10 we leave it to the Controller to tell the claimant that
11 that law doesn't exist anymore? I mean, what would be
12 the process if this were in here?

13 MR. STARKEY: I'll initially address that and
14 maybe Ms. Higashi wants to add to that, as well.

15 Under the current statutory scheme, there are a
16 number of permutations about what can happen once it
17 leaves the Commission's decision-making authority. And
18 depending upon where the dispute is raised and what
19 process you're in, there are a number of different ways
20 to address those changes. Some of the changes come
21 directly from the Legislature. Sometimes, depending upon
22 the issue, there could be Parameters and Guidelines and
23 amendments which would take care of the problem. Other
24 times -- I mean, I can conceive of a situation where
25 somebody would have to go into court to basically nullify

1 a decision.

2 The point for me is that in looking at that,
3 there's a fundamental question about the Commission's
4 legal authority to act and how long they can act. And at
5 some point in time -- and here, the Legislature has
6 indicated, I think, what it is under "reconsideration,"
7 that authority ends and then it becomes a matter for the
8 courts or for some other statutory process.

9 MEMBER STEINMEIER: Thank you.

10 CHAIR PORINI: Okay, Paula?

11 MS. HIGASHI: Let me just comment. What the
12 Commission has done in the past, is that there are -- at
13 least since I've been here, I can think of at least two
14 specific instances where the Legislature changed a law in
15 such a way that it deleted some of the mandated
16 activities that were defined in the Parameters and
17 Guidelines. In those situations, while routine
18 Parameters and Guidelines amendments were proposed at the
19 same time, amendments were made to delete the provisions
20 that were no longer reimbursable because the statutes no
21 longer existed.

22 In the situation where something is added, that
23 would require a new test claim to be filed on the new
24 statutes or executive orders. But there have also been
25 instances where, through the budget process, the

1 Department of Finance staff has identified mandates that
2 have been repealed and then just zeroed out the funding,
3 the proposed appropriation for the mandate. And
4 typically, that's what's happened.

5 As you know, the Commission, as a quasi-judicial
6 agency, doesn't necessarily have the power to initiate
7 revisions to prior decisions, without someone making the
8 request.

9 CHAIR PORINI: Okay, Members?

10 Any final comments, Shirley?

11 MS. OPIE: No. Thank you.

12 CHAIR PORINI: Okay.

13 MEMBER VAN HOUTEN: I do have a question.

14 CHAIR PORINI: Mr. Van Houten?

15 MEMBER VAN HOUTEN: I understand the
16 Controller's concern. And the question that comes to my
17 mind is, if we follow what I understand Mr. Barnes is
18 asking us to do, to strike this, what are the
19 ramifications to this proposal? Is there any?

20 CHAIR PORINI: Paula?

21 MS. HIGASHI: That the Commission would not be
22 making or proposing any amendments to that particular
23 section of the regulation, we would not be receiving any
24 comment on it by it just being completely eliminated from
25 this package.

1 MEMBER VAN HOUTEN: By not having it stated, you
2 believe it would eliminate comment; is that what you
3 said?

4 MS. HIGASHI: Yes, because it wouldn't be a
5 subject of rulemaking.

6 MEMBER VAN HOUTEN: Okay.

7 MS. HIGASHI: So if it's deleted completely, it
8 would not be a subject of rulemaking; it would stand in
9 the regulations.

10 If the Commission were to receive a request to
11 initiate one of these, then we would at that point in
12 time determine what we do and how we apply that
13 regulation.

14 MEMBER VAN HOUTEN: So when we go out and ask
15 for public comment, we cannot add to this or delete from
16 this?

17 CHAIR PORINI: We can delete.

18 MS. HIGASHI: We can delete it from the package

19 --

20 MEMBER VAN HOUTEN: But you cannot add?

21 MS. HIGASHI: -- but if you -- right. If we
22 wanted --

23 CHAIR PORINI: You start the whole rulemaking
24 process.

25 MS. HIGASHI: We would have to initiate a

1 brand-new rulemaking, go back to having another order
2 before you, and renotice it through the Office of
3 Administrative Law.

4 MEMBER VAN HOUTEN: Okay, thank you.

5 MS. HIGASHI: This, at least, gives you the
6 option.

7 CHAIR PORINI: Okay. So we have before us
8 a rulemaking package with dates for public comment and
9 potentially adopting the regulations to send to the
10 Office of Administrative Law.

11 Do members have any further questions on the
12 item, or do I hear a motion to proceed?

13 Mr. Barnes?

14 MEMBER BARNES: I'll make a motion for the staff
15 recommendation, but with the provision to delete the
16 elimination of 1188.5.

17 CHAIR PORINI: All right. So Mr. Barnes makes a
18 motion to approve staff's recommendation, but delete the
19 proposed amendment to 1188.5.

20 Do I hear a second?

21 Okay, now, since there was no second to that
22 motion, do I have another motion on this item?

23 Ms. Steinmeier?

24 MEMBER STEINMEIER: I'll move the staff
25 recommendation for the package that has been proposed.

1 MEMBER WILLIAMS: Second.

2 CHAIR PORINI: We have a motion and a second to
3 move staff's recommendation.

4 May I have roll call?

5 MS. HIGASHI: And I just wanted to clarify,
6 before you vote on it. You're voting on a recommendation
7 to initiate the rulemaking?

8 MEMBER STEINMEIER: Right.

9 CHAIR PORINI: We're not actually doing anything
10 else?

11 MEMBER STEINMEIER: Right.

12 CHAIR PORINI: Correct.

13 MS. HIGASHI: Mr. Barnes?

14 MEMBER BARNES: I'll abstain.

15 MS. HIGASHI: Mr. Lazar?

16 MEMBER LAZAR: Aye.

17 MS. HIGASHI: Ms. Steinmeier?

18 MEMBER STEINMEIER: Aye.

19 MS. HIGASHI: Mr. Van Houten?

20 MEMBER VAN HOUTEN: Aye.

21 MS. HIGASHI: Ms. Williams?

22 MEMBER WILLIAMS: Aye.

23 MS. HIGASHI: Ms. Porini?

24 CHAIR PORINI: Aye.

25 MS. HIGASHI: Thank you.

1 CHAIR PORINI: That takes us to Item 11, the
2 staff report.

3 MS. HIGASHI: Since I forgot to do this last
4 time, I wanted to be sure that I do it this time. But
5 I'd like to introduce Megan Gallagher. Megan is one of
6 our summer law clerks. She's from UC Davis law school.
7 And this is her second hearing now. She's working on
8 test claims that won't come up for a while, for a couple
9 more months.

10 And I'd also like to make some acknowledgements
11 regarding the staff at the Department of Finance. This
12 is the last Commission on State Mandates hearing for
13 Tom Lutzenburger and Amber Pearce. They have been both
14 our budget analysts, as well as our mandates coordinators
15 from Department of Finance. And I wanted to express my
16 appreciation to them for all of the support they've given
17 us through the budget process and just their willingness
18 and helpfulness in responding to my questions and our
19 staff questions and everything related to the budget
20 drills.

21 And Tom is moving to a slightly different
22 assignment. He's still going to be at Finance.

23 And Amber has decided to go to law school. She
24 has actually confessed that she -- instead of the
25 number-crunching, she really preferred the bill analyses

1 and she really liked the mandates work. So here she is.

2 She has one more week at Finance, and then she'll be
3 going off to McGeorge.

4 So we wanted to congratulate them.

5 And I'd also like to announce that Keith
6 Gmeinder, who is not here today, he's on vacation, he'll
7 be taking over for Tom. And Kristin Shelton will be
8 returning to the mandates assignment. She was here
9 before with Jim Apps, so she's familiar with our work and
10 our budget.

11 And it's a good thing because if you look at the
12 workload report --

13 CHAIR PORINI: Nice segue.

14 MS. HIGASHI: -- they're getting out at a good
15 time. You'll see from my transmittal memo that we
16 received a number of new filings, and most of them all
17 are over at the Department of Finance being reviewed
18 right now, so I'm sure that Amber and Tom are happy to
19 get out of there.

20 Most of our work, as you can see, if you look at
21 the July 9th column, we've had significant increases in
22 the Proposed Parameters and Guidelines amendments, as
23 well as in the workload that's pending for staff analyses
24 of test claims.

25 The rest of my report, I have gone through the

1 Budget Act and the budget trailer bills, and given you
2 information that was current at the end of June. The
3 budget trailer bills, as you know, are still pending, and
4 so I didn't include copies of the documents, figuring
5 that they're subject to change, potentially.

6 There's a lot of detail here for the first time.

7 For a number of years, Commission will pick up
8 additional workload based on the budget trailer bills,
9 both from potential changes to the statutes; and if a
10 proposed statute of limitations is enacted, there's a
11 potential for many more test claims being filed.

12 CHAIR PORINI: Paula, you need to speak directly
13 into your mike. There's a lot of noise in the hallway.
14 Folks in the back can't hear you.

15 MS. HIGASHI: I'll try to lean in.

16 CHAIR PORINI: Thanks.

17 MS. HIGASHI: So there is the potential for an
18 increased workload of new test claims coming in if a
19 statute of limitations is enacted for all of those
20 directives and executive orders that were enacted prior
21 to January 1, 2002. There is also the potential for
22 additional workload, in that the Legislature has directed
23 the Bureau of State Audits to audit the POBR mandate and
24 to make recommendations. Also, there is language in the
25 trailer bills regarding certain mandates that are now in

1 existence, directing Commission to make certain kinds of
2 P's and G's amendments. So that would be potential
3 agenda items that come from the legislative directives.

4 CHAIR PORINI: Okay.

5 MS. HIGASHI: Are there any questions?

6 Regarding our future agendas, we've had a number
7 of adjustments to the agendas that have been detailed.
8 And I'll just make a couple of quick references. For the
9 August hearing, the Enrollment Fee Collection test claim
10 will be moved off to the following month; also Attendance
11 Accounting and School District Reorganization, and that's
12 because we needed to extend the comment periods.

13 For Presidential Primaries, the Parameters and
14 Guidelines, revised Parameters and Guidelines proposal
15 just came in. We cannot make the August agenda, so that
16 will be moved up. It may end up going as far out as
17 October. We're not sure yet.

18 The Investment Reports, P's and G's amendment,
19 has been moved to September, at the request of the
20 claimants.

21 For the September hearing, all of the items that
22 we moved forward, plus Charter Schools Collective
23 Bargaining will be taken off that agenda.

24 And I think the rest of the items here -- the
25 statewide cost estimates and the P's and G's should be

1 fine.

2 CHAIR PORINI: Okay.

3 MS. HIGASHI: So we have some new agendas coming
4 up, and we'll do the best we can.

5 Are there any questions?

6 CHAIR PORINI: Questions or comments from
7 Members?

8 Okay, thank you.

9 Then at this point in time I'll ask if there's
10 any public comment.

11 We are going to go into closed executive
12 session, and we will come back into our public session.
13 So the Commission will now meet in closed executive
14 session pursuant to Government Code Section 11126(e), to
15 confer with and receive advice from legal counsel for
16 consideration and action, as necessary and appropriate,
17 upon the pending litigation listed on the published
18 notice and agenda, and to confer with and receive advice
19 from legal counsel due to any potential litigation, and
20 to Government Code Sections 11126(a) and 17526, the
21 Commission will also confer on personnel matters listed
22 on the published notice and agenda.

23 We will reconvene after we complete our closed
24 session.

25 Thank you.

1 *(The Commission met in closed executive session*
2 *from 11:07 a.m. to 12:07 p.m.)*

3 CHAIR PORINI: All right, I'll announce that the
4 Commission met in closed executive session pursuant to
5 Government Code Section 11126(e), to confer with and
6 receive advice from legal counsel for consideration and
7 action, as necessary and appropriate, upon pending
8 litigation listed on the published notice and agenda and
9 potential litigation; and Government Code Sections
10 11126(a) and 17526, to confer on personnel matters listed
11 on the published notice and agenda.

12 All required reports from the closed session
13 having been made; and with no further business, I'll
14 entertain a motion to adjourn.

15 MEMBER WILLIAMS: So moved.

16 MEMBER STEINMEIER: Second.

17 CHAIR PORINI: And we have a motion and a
18 second.

19 All those in favor, indicate with aye.

20 (A chorus of "ayes" was heard.)

21 CHAIR PORINI: We're adjourned. Thank you.

22 MS. HIGASHI: Thank you.

23 *(The proceedings concluded at 12:08 p.m.)*

24 --oOo--

25

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 31st day of July 2002.

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR